

June 14, 2002

**FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT**

This report is submitted in accordance with Section 646 of the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act or the Act).<sup>1</sup>

Section 646 states:

(a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.

(b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:

- (1) Progress with respect to each objective since the most recent preceding report.
- (2) Views of the Parties with respect to privatization.
- (3) Views of the industry and consumers on privatization.
- (4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.

**I. Progress as to Objectives and Purposes**

The purpose of the ORBIT Act is “to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”<sup>2</sup>

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<sup>1</sup> 47 U.S.C. § 765e (2000).

<sup>2</sup> 47 U.S.C. § 761 NOTE.

The ORBIT Act: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off, New Skies Satellites N.V. (New Skies), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to “limit through conditions or deny” applications or requests to provide “non-core” services to, from, or within the United States if it finds that competition will be harmed.<sup>3</sup> It provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.<sup>4</sup> In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure U.S. users the opportunity for direct access to the INTELSAT System.

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.<sup>5</sup> The Commission made its second report on June 15, 2001.<sup>6</sup> The Commission issued a Public Notice on March 28, 2002 inviting comment appropriate to the development of this third report.<sup>7</sup>

#### **A. Commission Actions and Activities**

The Commission has undertaken the following actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner, consistent with the privatization criteria of the Act.<sup>8</sup> The Commission has also taken these actions to implement certain deregulatory measures in the Act.<sup>9</sup>

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<sup>3</sup> The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. 47 U.S.C. § 769 (a)(11).

<sup>4</sup> The Act defines “additional” services as “direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands” for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. 47 U.S.C § 769(a)(12).

<sup>5</sup> *FCC Report to Congress as Required by the ORBIT Act*, 15 FCC Rcd. 11, 288 (rel. June 15, 2000).

<sup>6</sup> *FCC Report to Congress as Required by the ORBIT Act*, 16 FCC Rcd. 12,810 (rel. June 15, 2001).

<sup>7</sup> Public Notice, Report No. SPB-177, March 28, 2002.

<sup>8</sup> 47 U.S.C. §§ 761, 763, 763(a), 763(b), 763(c), and 765(g).

<sup>9</sup> 47 U.S.C. § 765 and 765(d)(1).

*INTELSAT*

- INTELSAT privatized at 7:59:59 PM EDT, on July 18, 2001. The Commission previously had granted authorizations conditioned on compliance with the ORBIT Act to Intelsat LLC, the separate private Delaware company created by INTELSAT, prior to privatization, to hold the U.S. authorizations and associated space segment assets upon privatization.<sup>10</sup> These authorizations covered the satellites, planned satellites, and planned system modifications associated with INTELSAT'S frequency assignments in the FSS C- and Ku-bands existing as of privatization.
- As a routine element of the FCC licensing regime, since privatization, Intelsat LLC has filed with the Commission a number of requests for license modifications and grants of authority. The Commission has reviewed these requests and acted on them in a transparent manner consistent with the United States licensing process.<sup>11</sup>
- Intelsat LLC is required by the ORBIT Act to conduct an Initial Public Offering (IPO) by October 1, 2001 to "substantially dilute" ownership by former INTELSAT Signatories. The Act gives the Commission discretion to extend this deadline to no later than December 31, 2002. In August 2001, Intelsat requested an extension of the deadline until December 31, 2002. The Commission placed this request on public notice August 28, 2001.<sup>12</sup> On October 5, 2001, the Commission granted this request on the basis of Intelsat's demonstration that it had insufficient time to take the substantial planning, financial, and legal preparations necessary to conduct an IPO since its July 18, 2001 privatization.<sup>13</sup> In its decision, the Commission further concluded that the grant of the extension was consistent with the ORBIT Act, which gave the Commission discretion to extend the deadline in consideration of market conditions and relevant business factors relating to the timing of the IPO.<sup>14</sup>

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<sup>10</sup> See *Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, *recon. denied*, 15 FCC Rcd 25234 (2000), *further proceedings*, 16 FCC Rcd 12280 (2001) (*Licensing Order*).

<sup>11</sup> Intelsat has filed a number of requests. By way of example, See *In the Matter of Intelsat LLC, Application to Modify Authorizations to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Order and Authorization, DA 01-2069, 16 FCC Rcd. 16,208 (Sat. and Radiocomm. Div., rel. September 4, 2001.); see also *In the matter of Intelsat LLC Modification of Authorization to Launch C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Order and Authorization, DA 02-333, 17 FCC Rcd. 2391 (Sat. and Radiocomm. Div., rel. February 13, 2002).

<sup>12</sup> Public Notice, Report No., SAT-00081, August 28, 2001.

<sup>13</sup> *In the Matter of Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 01-288, 16 FCC Rcd. 18185 (rel. October 5, 2001).

<sup>14</sup> 47 U.S.C. § 763 (5)(A)(i).

*Inmarsat*

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The Act specified a number of criteria for determining whether Inmarsat's privatization is pro-competitive. On October 9, 2001, the Commission released an Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.<sup>15</sup>
- In this decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act, the Commission granted Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere & Company permanent authority to use Inmarsat for communications services to, from, or within the United States.<sup>16</sup> These services previously had been temporarily authorized, pending the Commission's final decision on Inmarsat's ORBIT Act compliance.
- The ORBIT Act required Inmarsat to conduct an IPO no later than October 1, 2000. The Act permitted the Commission to extend this deadline to no later than December 31, 2001.<sup>17</sup> On October 3, 2000, the Commission granted a request for a six-month extension of the IPO deadline to July 1, 2001, on the basis that Inmarsat had demonstrated the need to restructure the company and develop innovative services in order to make an IPO attractive to investors and to achieve the substantial dilution of shareholder ownership as required by the Act.<sup>18</sup> In that decision, the Commission found that the ORBIT Act specifically provides for the authorization of Inmarsat services prior to Inmarsat's conduct of an IPO, provided that other requirements of the ORBIT Act are satisfied.
- On April 5, 2001, Inmarsat filed for a second extension of its IPO deadline to December 31, 2001 based on unfavorable market conditions. On June 28, 2001, the Commission granted this request on finding that Inmarsat had made a sufficient showing of market conditions and relevant business factors relating to the timing of an IPO and had demonstrated diligence in preparing for an IPO since the First Extension Order, so as to warrant an extension.<sup>19</sup> In that decision the Commission also required Inmarsat to file with the Commission, 30 days after the conduct of its IPO, a demonstration that the IPO is consistent with Section 621(2) and 621(5)(A)(11) of the ORBIT Act. The Commission will then determine whether

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<sup>15</sup> *In the Matter of Comsat Corporation et. al.*, Memorandum Opinion, Order and Authorization, FCC 01-27216, FCC Rcd. 21,661 (rel. October 9, 2001).

<sup>16</sup> See 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

<sup>17</sup> 47 U.S.C. § 763 (5)(A)(ii).

<sup>18</sup> *In the Matter of Inmarsat Ventures Ltd, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 00-356, 15 FCC Rcd. 19,740 (rel. Oct. 3, 2000).

<sup>19</sup> *In the Matter of Inmarsat Ventures Ltd., Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 01-193, 16 FCC Rcd. 13494 (rel. June 28, 2001).

Inmarsat has achieved “substantial dilution” as required by the ORBIT Act. If the IPO is not conducted within the timeframe established by the ORBIT Act or if “substantial dilution” is not achieved, the Commission retains authority under Section 601(b)(1)(B) of the Act to take appropriate action.<sup>20</sup>

- On November 13, 2001, Congress amended Clause (ii) of section 621(5)(A) of ORBIT Act, to further extend Inmarsat’s IPO deadline to December 31, 2002. Congress also gave the Commission discretion to further extend this deadline no later than June 30, 2003.<sup>21</sup>

#### *New Skies Satellites*

- New Skies is the Netherlands-based INTELSAT spin-off created in 1998 as INTELSAT’s first step toward privatization. On March 29, 2001, the Commission granted Permitted List conditions to remove secondary status requirements for certain New Skies satellites. This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.<sup>22</sup>
- In a recent order released on May 28, 2002, the Commission added NSS-7, a satellite launched and operated by New Skies, to the “Permitted Space Station List” at the 21.5° W.L. (338.5° E.L.) orbital location.<sup>23</sup> This action allows all routinely licensed “ALSAT” earth stations to provide fixed-satellite service (except direct-to-home service) using the NSS 7 satellite in the conventional C- and Ku-bands. This action should also stimulate competition in the United States, provide consumers more alternatives in choosing communications providers and services, reduce prices, and facilitate technological innovation.<sup>24</sup>

#### *Status of Comsat*

- The ORBIT Act terminated the 1962 Act’s ownership restrictions on Comsat Corporation (“Comsat”). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat’s various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin’s purchase of Comsat was in the public interest and authorized Comsat to assign its

<sup>20</sup> If the IPO does not meet the time or size requirements established in the ORBIT Act, Section 601(b)(1)(B) of the Act states that the Commission “shall limit through conditions or deny” any applications before it at that time and “limit or revoke previous authorizations to provide non-core services to, from, or within the United States.” 47 U.S.C. § 761(b)(1)(B).

<sup>21</sup> Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-77, § 628, 115 Stat. 748, 804 (2001).

<sup>22</sup> See *In the Matter of New Skies Satellites, N.V., Petition for Declaratory Ruling*, Order, DA 01-513, 16 FCC Rcd. 6740 (Sat. and Radiocomm. Div., rel. March 29, 2001).

<sup>23</sup> See *In the Matter of New Skies Satellites, N.V., Petition for Declaratory Ruling*, Order, DA 02-1256, 2002 WL 1050040 (F.C.C.) (Sat. and Radiocomm. Div., rel. May 28, 2002).

<sup>24</sup> *Id.* at 1.

FCC licenses and authorizations to a wholly owned subsidiary of Lockheed Martin Corporation.<sup>25</sup>

- On April 23, 2001, Comsat and Lockheed Martin jointly filed applications to assign 4 non-common carrier earth station licenses to Intelsat LLC and also filed an application to assign an Experimental License. These applications were placed on Public Notice on May 16, 2001.<sup>26</sup>
- On December 18, 2001, the Commission granted the applications filed by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS, to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor Satellite, Inc.<sup>27</sup> This proposed assignment was in connection with Telenor's proposed acquisition of CMC, a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.<sup>28</sup>
- On April 5, 2002, in connection with Intelsat's proposed acquisition of COMSAT World Systems and certain associated COMSAT business enterprises from Lockheed Martin, Comsat filed applications to assign common carrier and non-common carrier earth station licenses, private land mobile radio licenses, and international section 214 authorizations to Intelsat. Comsat also filed applications seeking to modify the common carrier status of certain earth station facilities that it proposes to assign to Intelsat, requesting that the facilities be used to provide service on both a common carrier and non-common carrier basis. These applications were placed on Public Notice on April 24, 2002.<sup>29</sup> The comment period was completed on June 7, 2002.

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<sup>25</sup> See *In the Matter of Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214*, Order and Authorization, FCC 00-277, 15 FCC Rcd. 22,910 (rel. July 31, 2000), DA 00-1789, 15 FCC Rcd. 23,506 (erratum, Sat. and Radiocomm. Div., rel. Sept. 8, 2000). A petition for reconsideration of this decision has been filed and is being reviewed by the Commission.

<sup>26</sup> Public Notice, Report No., SES-00288, May 16, 2001.

<sup>27</sup> *In the Matter of Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, FCC 01-369, 16 FCC Rcd. 22,897 (rel. December 18, 2001), DA 02-266, 17 FCC Rcd. 2147 (erratum, Int'l Bur. rel. Feb. 5, 2002).

<sup>28</sup> See Public Notice, DA 02-357, February 14, 2002 (Public Notice inviting comments Telenor Satellite Services Holdings, Inc. petition for declaratory ruling on inapplicability of cost accounting requirements).

<sup>29</sup> Public Notice, DA 02-951, April 24, 2002.

*Direct Access*

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity.<sup>30</sup> Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.<sup>31</sup> The concept of Direct Access became moot with privatization because Intelsat LLC, as a private company, does not have signatories.
- Section 641(b) of the ORBIT Act requires that the Commission complete a rulemaking “to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment directly from INTELSAT to meet their service or capacity requirements.”<sup>32</sup> In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.<sup>33</sup>
- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. The negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat’s report on public notice on April 6 and BT North America and Sprint commented opposing termination of the proceeding.<sup>34</sup> The parties have pursued negotiations and at this time the Commission is reviewing the issues to determine whether further steps may be appropriate.

*Regulatory Fees*

- The ORBIT Act authorizes the Commission “to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services.”<sup>35</sup> On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III

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<sup>30</sup> 47 USCA § 765(a).

<sup>31</sup> *Direct Access to the INTELSAT System*, IB Docket No. 98-192, Report and Order, 15 FCC Rcd. 15,703 (rel. September 15, 1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

<sup>32</sup> 47 USCA § 765(b)

<sup>33</sup> *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91, Report and Order, FCC 00-340, 15 FCC Rcd. 19,160 (rel. September 19, 2000).

<sup>34</sup> Public Notice, Report No. SPB-166, April 6, 2001.

<sup>35</sup> 47 U.S.C. § 765(a)[c]. A 1999 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission’s 1998 fee order, which did not assess a fee against Comsat.

authorizations to launch and operate geosynchronous space stations.<sup>36</sup> Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees.<sup>37</sup> Recently, the Circuit Court of Appeals for the District of Columbia reviewed the Commission's decision and held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, favoring recovery of regulatory costs, gave the Commission good reason to require Comsat to bear "its proportionate share of [space station] fees."<sup>38</sup>

- Post-privatization, Intelsat, as a U.S. licensee, has been fulfilling its obligations and paying the requisite regulatory fees as mandated in Section 9 of the Communications Act 1934.

### **B. Status of INTELSAT Privatization**

In the year since the Commission's 2001 report to Congress, substantial progress has been made toward achieving a primary purpose of the ORBIT Act – fully privatizing INTELSAT.<sup>39</sup> As anticipated, Intelsat privatized and became a U.S. licensee, as of July 18, 2001.

As part of its decision to privatize INTELSAT, the Assembly of Parties retained a small residual intergovernmental organization known as ITSO, an acronym for the International Telecommunications Satellite Organization. ITSO, through a "Public Services Agreement" with Intelsat LLC, monitors the performance of the company's public service obligations to: maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation (LCO) to certain customers (those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC).<sup>40</sup> Under these commitments, the privatized Intelsat LLC keeps capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years, while the lifeline users are only committed for its capacity on a year-to-year basis at their option. ITSO has no operational or commercial role.

#### *INTELSAT as Privatized*

Upon privatization, substantially all of INTELSAT's operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. Intelsat, Ltd. is the holding company for all other companies in the group and is

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<sup>36</sup> *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, FCC 00-117, MD Docket No. 00-58 at ¶ 24 (rel. July 10, 2000).

<sup>37</sup> *Id.*

<sup>38</sup> *See Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

<sup>39</sup> 47 U.S.C. § 761 NOTE.

<sup>40</sup> *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00 ¶ 34 at 6-8 (Nov. 27, 2000) ("2000 Assembly Decision").



organized under the laws of Bermuda. It holds the United Kingdom authorizations for INTELSAT's ITU registrations in the Ka-, BSS-, and V-bands.<sup>41</sup> Intelsat (Bermuda), Ltd. ("Intelsat Bermuda"), a wholly owned subsidiary of Intelsat, Ltd., is responsible for the oversight of satellite procurement and operational matters, including matters involving control of space and ground segment assets, from Bermuda. Intelsat Global Service Corporation, a wholly owned subsidiary of Intelsat Bermuda and organized as a Delaware corporation, provides technical, marketing, and business support services to Intelsat, Ltd. and its subsidiaries pursuant to intercompany contracts. These services include the day-to-day operation of the satellite network. Intelsat Holdings LLC, a Delaware limited liability company and also a wholly owned subsidiary of Intelsat Bermuda, functions only as a holding company for Intelsat LLC, a Delaware limited liability company that is the U.S. licensee for operation of existing and planned satellites in the C-band and Ku-band. All space segment assets operating in these bands have been transferred to Intelsat LLC. Intelsat LLC sells all of its space segment capacity to Intelsat Bermuda.<sup>42</sup> Intelsat Global Sales & Marketing Ltd. ("Intelsat U.K."), a wholly owned subsidiary of Intelsat Bermuda organized under the laws of England and Wales, is the contracting party for most of Intelsat's customer contracts. Going forward, Intelsat's U.S. customers will contract with Intelsat USA Sales Corp., a wholly owned subsidiary of Intelsat U.K. and a Delaware corporation. Some of Intelsat's U.S. customers have already transferred their existing customer service commitments to Intelsat USA Sales Corp. Most of the customer service commitments entered into by INTELSAT prior to the privatization were transferred to Intelsat U.K. pursuant to novation agreements. Intelsat U.K. buys space segment capacity from Intelsat Bermuda to serve existing and future customers. Customers are able to acquire Intelsat space segment capacity either through distributors or on a wholesale customer basis. The Intelsat holding company structure also includes regional support centers and field offices, which provide marketing and sales support and are located in various countries.

The companies have created fiduciary boards of directors. The companies do not maintain an immune or privileged status. The selection procedure for members of the board of directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. The licensing companies have licenses through notifying administrations in countries (U.S. and U.K.) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.<sup>43</sup> These companies are subject to U.S. or U.K. licensing authorities and, as mentioned below, conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

## II. Views of INTELSAT Parties on Privatization

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<sup>41</sup> *In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

<sup>42</sup> *In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Information Regarding Post-Privatization Distribution Arrangements at 2, note 6 (Mar. 16, 2001).

<sup>43</sup> *In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

The Commission, in response to the Public Notice, has not received any views from Parties regarding privatization.

### **III. Views of Industry and Consumers on Privatization**

PanAmSat Corporation (PanAmSat), Intelsat LLC (Intelsat), Inmarsat Ventures plc. (Inmarsat), the International Telecommunications Satellite Organization (ITSO), Stratos Mobile Networks (USA) LLC and MarineSat Communications Network, Inc. (collectively “Stratos”), and Telenor Satellite, Inc. (Telenor), responded to the Commission’s public notice inviting comments appropriate to the development of this report. The Commission received no filings specifically representing views of consumers or consumer groups.

#### *Intelsat Privatization Comments*

Intelsat maintains that a key objective of the ORBIT Act—the pro-competitive privatization of INTELSAT—has been achieved. It states that since its date of privatization, July 18, 2001, Intelsat’s shareholders have elected a fiduciary board, company officials have begun preparing for an initial public offering (IPO) and Intelsat has competed in the marketplace as a U.S.-licensed space station operator on the same footing as its competitors—*i.e.*, free from any privileges and immunities derived from its former status as an Intergovernmental Organization (IGO).

Intelsat provides two examples as evidence of its pursuit of growing market opportunities in this competitive environment. Recently, Intelsat announced that, subject to regulatory approval, it will acquire substantially all of the assets of COMSAT World Systems (“CWS”) and certain associated COMSAT business enterprises from Lockheed Martin Corporation. Intelsat states that this proposed transaction will integrate its satellite facilities with CWS’ sales, marketing and customer service expertise to improve Intelsat’s operational efficiency and thereby enable it to offer competitive enhanced, high quality service to U.S. customers. Intelsat also announced its acquisition of a teleport facility in Fuschsstadt, Germany from Deutschce Telekom AG, as well as key traffic exchange points in Los Angeles, New York and London that will be connected to the newly acquired teleport facility.

PanAmSat argues that although privatized, Intelsat still maintains market access privileges it had enjoyed as an IGO in contravention of the ORBIT Act. PanAmSat proposes that the Commission work with other governmental agencies, the ITU and the satellite industry to break down the market access barriers that U.S. companies face overseas. Specifically PanAmSat suggests that the Commission should: (1) promote transparent and non-discriminatory licensing procedures worldwide for international satellite networks; (2) support efforts to make non-U.S. regulators aware that exclusive access for Intelsat is no longer obligatory; and (3) encourage non-U.S. regulators to provide access to more than one global satellite operator. PanAmSat further encourages the relevant government agencies to participate in the ITU’s Development Sector Study Group, to encourage the development of open and competitive satellite markets around the world.

In response to this proposal, Intelsat argues that its privatization has in fact promoted access to the global marketplace for all its competitors. It contends that as a U.S. licensee, Intelsat’s market access opportunities are the same as other U.S. satellite providers. Moreover, Intelsat argues that U.S. licensing of Intelsat maximizes the number of markets that other U.S. operators can access because the most favored nation obligation requires WTO-member countries

that grant market access to Intelsat also to grant market access to other U.S. satellite operators. Stratos also denies encountering any market entry issues outside of the United States, with respect to offering its satellite communication services. Rather, it maintains that privatization and increased competition for satellite service worldwide has allowed Stratos to become one of the fastest growing satellite companies in the world.

In the Intelsat LLC *Licensing Order*, the Commission conditioned the authorizations granted to Intelsat LLC on compliance with the ORBIT Act restrictions on exclusive arrangements for the provision of satellite services between the United States and other countries.<sup>44</sup> We found in the INTELSAT *ORBIT Act Compliance Order* that the INTELSAT privatization would not violate this restriction and said we would enforce it in the future on a case-by-case basis as facts may require.<sup>45</sup> While no specific case has been presented for enforcement action at this time, we agree with PanAmSat, that market entry is fundamental to achieving and maintaining competition in satellite communications. The Commission therefore will continue to work with the U.S. government agencies that have the primary responsibility for ensuring that U.S. operators secure market access overseas. We believe that PanAmSat's specific proposals should be considered in an inter-agency context.

#### *Inmarsat Privatization Comments*

In its comments Inmarsat provided further details on the status of its IPO. Inmarsat maintains that it has been preparing diligently for its IPO, while waiting for sustainable recovery of the financial markets. Inmarsat states that it has (1) reorganized its corporate structure to facilitate an IPO; (2) has been working with an investment bank, which serves as the global coordinator of the IPO, since May 2000; (3) has decided to list its securities on the New York Stock Exchange and London Stock Exchange; and (4) commenced seeking requisite IPO approval from the Securities and Exchange Commission in December 2000, and from the U.K. Listing Authority in February 2001. Inmarsat further maintains that it also has heavily invested resources for preparing for its IPO, and hopes to conduct it as soon as market conditions permit.

Inmarsat, Telenor, and Stratos maintain that Inmarsat's privatization and the October 9, 2001 Commission decision to open the domestic U.S. market to Inmarsat services, have resulted in the expansion of service choices and opportunities for U.S. customers. Specifically, Inmarsat and Telenor discussed the initiation of "Fleet," Telenor's new commercial maritime service that is provided via the Inmarsat system through Telenor's land earth station facility in Santa Paula, California. This service is intended to serve a wide range of commercial communication needs to a variety of ocean-going vessels. The Fleet service also includes a new feature that Telenor and Inmarsat claim will provide a significant cost effective benefit to U.S. consumers.

Stratos maintains that the increase in competition and services resulting from Inmarsat's privatization will increase jobs in the United States and industry access in the marketplace.

Copies of the comments are attached.

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<sup>44</sup> *Licensing Order* at ¶¶ 27-28.

<sup>45</sup> *Intelsat LLC ORBIT Compliance Order* at ¶¶ 57-62.

#### **IV. Impact of Privatization**

Section 646 requests that we report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

INTELSAT's privatization was designed to allow Intelsat LLC to continue to operate in a manner and provide services that meet U.S. commercial and governmental (including national security) needs. Privatization has enabled Intelsat to compete freely for all satellite business opportunities, thereby allowing it to explore new and dynamic services to better serve the public. This positively impacts the global marketplace for communications services, ensuring increased competition and more access. The United States retains under its jurisdiction a company with valuable satellite assets and associated orbital locations. Furthermore, the location of the service and licensing companies in the United States contribute to jobs and productivity in the United States. Intelsat currently employs approximately 900 individuals, many of whom are highly skilled in the intricacies of high technology business. As Intelsat continues to grow, it will provide additional business and career opportunities.

In its capacity as Notifying Administration to the ITU for the FSS C-and Ku-band frequency assignments transferred at privatization, the FCC has participated in a number of international coordination negotiations as Intelsat's licensing administration and, consistent with the U.S. domestic process, has ceased to participate in coordinations between Intelsat and U.S. operators. For example, a coordination of significance was completed between the United States, on behalf of Intelsat at 24.5° W.L., 20° W.L. and 18° W.L. and the Netherlands, on behalf of New Skies at 22° W.L. and 21.5° W.L. On the domestic front, prior to Intelsat's privatization, the United States had been participating in a coordination between Intelsat at 66° E.L. and the United States, on behalf of PanAmSat at 68.5° E.L. Following privatization, consistent with the domestic United States procedures, PanAmSat and Intelsat, as two United States licensees, resolved their coordination issues in a mutually acceptable manner without further involvement of the FCC.

The United States has in place a coordination process whereby operators may reach operational arrangements with operators of other administrations, which are then submitted to the operators' respective jurisdictions for approval. Once approved by both administrations, the operational arrangements become, or form the basis for, a coordination agreement between the administrations under the ITU procedures. Since privatization on July 18, 2001, Intelsat has participated in a number of meetings with operators from France, India, Spain, and the United Kingdom as part of this process. In due course, this will lead to coordination agreements between the United States and these foreign administrations.

Inmarsat's privatization has also had a positive impact on the domestic U.S. market. Privatization has provided Inmarsat the opportunity to develop new, innovative services for the U.S. market that promises to result in the expansion of options and resources for U.S. customers. This also promises to lead to increased industry competition. As a result of privatization and Commission authorization, distributors were given access rights to distribute Inmarsat services in the United States. This has led to a growing number of jobs in the United States. One such example is that of Stratos Global Corp ("Stratos"). Following Inmarsat's privatization, Stratos moved its corporate headquarters and numerous jobs to Bethesda, Maryland. The United States is currently Stratos' largest market for Inmarsat services and the home to more Stratos employees than any other country. As Inmarsat continues to develop, it will provide further benefits for U.S. industry and consumers.

Finally, both Inmarsat's and INTELSAT's privatization have placed a priority on continued provision of service to all portions of the globe. Inmarsat committed to support global maritime distress and safety services (GMDSS) and the INTELSAT Assembly of Parties determined that Intelsat LLC should be contractually bound under a Public Service Agreement with the International Telecommunications Satellite Organization (ITSO) to ensure continued global connectivity -- particularly to countries dependent on Intelsat LLC's satellite services.

## **V. Summary**

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

Enclosures: Comments received in response to the Commission's Public Notice.